IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 6TH JULY 2006 / 15TH ASHADHA,1928

TRC.No. 223 of 2002()

TA.303/2001 of COMMR.KERALA AGR.IT & STAT,TVM.
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PETITIONER: ASSESE/APPELLANT

M.SAINULABDEEN, KANAMPALLIL STORES,
KOLLAM.

BY ADV. SRI.K.B.MUHAMED KUTTY
SRI.K.M.FIROZ

RESPONDENTS: REVENUE/RESPONDENT

STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 06/07/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON 3667 OF 2002 IN TRC 223 OF 2002

DISMISSED

6.7.2006

SD/-C.N.RAMACHANDRAN NAIR, JUDGE.
SD/-K.M. JOSEPH, JUDGE.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

T.R.C. NO. 223 OF 2002

Dated this the 6th day of July, 2006

JUDGMENT

Ramachandran Nair,J.

Heard counsel for the petitioner and Government Pleader appearing for the respondent. The question raised is whether the Tribunal is justified in sustaining addition of value of goods brought in the petitioner's name through checkpost under two delivery note together with estimated gross profit thereof for probable omissions. It is seen that in the assessment additions were made for transport under four delivery notes. The first appellate authority remanded the additions pertaining to transport under two delivery notes. So far as the other two delivery notes are concerned, he found that the petitioner was given all the details by the Department including Kerala registration number of the vehicles, and the name of the driver in one case. If at all petitioner was serious, petitioner could have tried and traced the vehicle, its owner and drivers and found out the actual person who

transported the goods. However, no attempt is seen made in this regard. The Tribunal sustained the addition. Even though counsel for the petitioner contended that there is violation of Section 30B(4) of the KGST Act we do not find any such violation in respect of these two consignments because admittedly the Officer furnished registration number of the vehicles and even the name of the driver in one case. In the circumstances, we do not find any justification to interfere with the order of the Tribunal sustaining addition pertaining to the transport covered by two delivery notes and addition of gross profit thereon.

2. So far as the challenge against addition of 25% to cover probable omissions also, we find the Tribunal has reduced the addition sustained by the first appellate authority from 50% to 25%. We do not find any question of law in the addition made for probable omissions because petitioner's accounts are obviously found unacceptable and addition is therefore justified. The Officer made 50% addition because unaccounted transaction included the turnover covered by four delivery notes. This was reduced by the first appellate authority to transport covered by two delivery notes, but still he sustained 50% addition.

Tribunal however showed leniency and granted proportionate reduction of 25%. We do not find any question of law on this issue also.

Therefore TRC is devoid of any merit and is dismissed.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge